

SBA

LENDER'S NEWSFLASH

#10-04

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Express Lending Recovery Act Loan Documentation Requirements

SBA Nebraska would like to remind our SBAExpress lenders about documentation requirements for Recovery Act loans. SBA's Office of the Inspector General has found documentation related deficiencies when reviewing Recovery Act loans.

In order to properly document Recovery Act loan files, SBA reminds lenders to make sure that their loan files contain specific documentation in the following areas:

- 1. Borrower certification of hiring practices for 7(a) Loans with the Increased Guaranty:** Prior to first disbursement on a 7(a) loan with the increased guaranty, lenders must require that the Borrower and any Operating Company certify that they have not been determined by the Secretary of Homeland Security or the Attorney General to have engaged in a pattern or practice of hiring an alien, recruiting an alien or referring an alien for a fee for employment in the United States, knowing that the person is an unauthorized alien.
- 2. Allowable Uses of Recovery Act Funds:** The Recovery Act established that no funds could be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course or swimming pool. SBA loan guarantees funded with Recovery Act funds may not be made available to businesses primarily engaged in these activities or to businesses that intend to use guaranteed loans for the acquisition, construction, renovation or other purposes that include restricted uses.
 - a. Certification that no funds will be used for a restricted use:** Lenders must certify on the applicable eligibility questionnaires and checklists that no loan proceeds will be used for a restricted use.
 - b. Certification of uses for working capital funds:** If an applicant receives a working capital loan, prior to first disbursement, the lender must require the Borrower and any Operating Company to certify that no funds from the working capital loan will be used for restricted purposes. This certification must be retained in the lender's loan file.
 - c. Credit memorandum and certification for projects with restricted uses:** If an applicant will receive a loan to acquire, construct or renovate an existing facility that also has a golf course or swimming pool, for example, then:

- i. The lender must document in the credit memorandum that the use of proceeds does not include financing the restricted use and document the other resources that cover the financing of this component; and
- ii. Prior to first disbursement the lender must require the Borrower and any Operating Company to certify that alternate funding (which may come from the borrower's equity) has been obtained to pay the costs allocable to the acquisition, construction or renovation of the golf course or swimming pool.

The credit memorandum and the certification must be retained in the lender's loan file.

SBA urges all participants to ensure that their documentation of Recovery Act loans is complete and accurate. SBA will review Recovery Act loans carefully during the purchase process and in the course of lender oversight activities in order to ensure that the requirements set out in the law were fully met.

For more detailed information regarding this, please refer to SBA Information Notice 5000-1134, found on our local SBA Nebraska website at: http://www.sba.gov/idc/groups/public/documents/sba_program_office/bank_5000-1134.pdf

**SBA Nebraska wants to say "Thank You!" for your continuing support of
Nebraska's small businesses!**

****The Nebraska District Office would also like to remind you to contact us if you are having problems working with our loan center(s).**

PLEASE DO NOT WAIT!

If you have any questions or need additional guidance, please contact our office at 402-221-4691.

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